

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA**

**CRYSTAL GOOD, et al.,**

**Plaintiffs,**

**v.**

**WEST VIRGINIA-AMERICAN WATER  
COMPANY, et al.,**

**Defendants.**

**Case No.: 2:14-CV-01374**

**Hon. John T. Copenhaver, Jr.**

**Consolidated with:**

**Case No. 2:14-11011**

**Case No. 2:14-13164**

**Case No. 2:14-13454**

**REQUEST FOR LEAVE BY THE CHOP HOUSE AND TIDEWATER RESTAURANTS  
TO WITHDRAW NOTICE OF OPT OUT FROM CLASS SETTLEMENT**

The Chop House and Tidewater Restaurants of Charleston (“Chop House/Tidewater”) submit the following request for leave to withdraw the opt out notices submitted on their behalf and to allow their participation as class members in the proposed class action settlement of this matter. Chop House/Tidewater state the following in support of this request:

1. Currently pending before this Court is a proposed class action settlement that would resolve all claims by putative class members against Eastman Chemical Company and the American Water Defendants arising from the Freedom Chemical Spill on January 9, 2017. The Court preliminarily approved the proposed settlement on September 21, 2017, and established a deadline of December 8, 2017 by which any potential class member must file a notice to exclude itself (opt out) from the settlement or be bound by the settlement if it is finally approved.

2. Chop House is a restaurant in Charleston that operates under the corporate name of The Chop House of Charleston, LLC. Tidewater is a restaurant in Charleston that operates under

the corporate name of Real Seafood Company of Charleston, LLC. Those corporate entities are owned by their parent company, Mainstreet Ventures, Inc. Chop House and Tidewater were eligible as putative class members to participate in the proposed class settlement in this action.

3. Chop House/Tidewater are listed as assignors of claims encompassed in a separate lawsuit filed by the West Virginia Hospitality and Travel Association, Inc. (“WVHTA”) pending in this Court. *See West Virginia Hospitality & Travel Ass’n, Inc. v. American Water Works Co., Inc.*, No. 2-16-cv-00184 (S.D.W. Va.). On December 8, 2017, WVHTA submitted an opt out notice on its own behalf and on behalf of certain member-assignors, including Chop House and Tidewater, requesting exclusion from the class settlement in this action.

4. Chop House/Tidewater is now working with different counsel and would like to withdraw the opt out notices and pursue claims through the proposed class settlement, if approved, rather than through the WVHTA lawsuit.

5. Because the opt out deadline set by the Court has passed, Chop House/Tidewater seeks leave from this Court to withdraw the opt out notice. Counsel for Chop House/Tidewater has conferred with Class Counsel, counsel for WVHTA, counsel for Eastman, and counsel for the American Water Defendants and those parties do not object to this Request.

6. “[C]ourts have the authority to permit class members to withdraw their exclusion (i.e., to opt back in), and they will generally do so as long as there is no prejudice to the class or abuse of the class action process.” 4 Newberg on Class Actions § 13:23 (5th ed.). Particularly when there are no objections from class counsel or other parties, “courts have consistently permitted parties to withdraw requests to opt out of class actions.” *In re Urethane Antitrust Litig.*, No. MDL 1616, 2008 WL 5215980, at \*1 (D. Kan. Dec. 12, 2008); *see also id.* at \*1-\*2 (citing cases where courts approved withdrawal of opt out notices). Courts have recognized that such

withdrawals do not create prejudice to class members because “[i]t cannot be said that any class member relied, to its detriment, on the [opt-in plaintiffs’] original decision to opt out, since that development was contemporaneous with all other decisions and could not have been a factor in the decision of any particular class member to participate.” *In re Electrical Carbon Products Litig.*, 447 F. Supp. 2d 389, 397 (D.N.J. 2006).

7. This Court should approve Chop House/Tidewater’s request because there is no prejudice to the class or abuse of Rule 23. Chop House/Tidewater has made an independent decision to seek to withdraw the prior opt out notice and to participate in the class settlement. Granting this request will not affect the administration of the settlement because the Court has not finally approved the proposed settlement class and settlement agreement. As noted above, class members will not be prejudiced by this withdrawal because their own decisions with respect to the settlement did not turn on Chop House/Tidewater’s participation. *See In re Electrical Carbon Products*, 447 F. Supp. 2d at 397. Finally, class counsel and the defendants do not object to this request and support Chop House/Tidewater’s participation in the class settlement.

### **CONCLUSION**

For these reasons, Chop House/Tidewater respectfully requests that the Court grant leave to withdraw the opt out notice filed on their behalf on December 8, 2017 and allow Chop House/Tidewater to participate and make claims as class members in the proposed class action settlement in this matter.

Respectfully submitted,

/s/ Bernard E. Layne, III

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**CERTIFICATE OF SERVICE**

The undersigned counsel for Plaintiffs here by certifies that on 3<sup>rd</sup> day of January, 2018, the foregoing **REQUEST FOR LEAVE BY THE CHOP HOUSE AND TIDWATER RESTAURANTS TO WITHDRAW NOTICE OF OPT OUT FROM CLASS SETTLEMENT** was served on all counsel of record through the CM/ECF system which will send notification of the filing to all counsel of record.

Respectfully submitted,

/s/ Bernard E. Layne, III

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